

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5526 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

PRAGJI AMARASINGH JADEJA THRO' BROTHER VIKRAMSINGH

Versus

UNION OF INDIA

Appearance:

MR NM KAPADIA for Petitioner
MR AKSHAY MEHTA, Ld. Sr. Standing Counsel with
MS PJ DAVAWALA for Respondent No. 1
MR SK PATEL, Learned AGP with MR SN SHELAT, Learned
Addl. Advocate General for Respondent No. 2,3,4.

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 17/10/2000

C.A.V. JUDGEMENT

1. The petitioner has preferred this petition for appropriate writ, order or direction for quashing and setting aside the impugned order of detention dated 17.3.1994 placed at Annexure-A to the petition issued by the Additional Chief Secretary, Government of Gujarat, Home Department (Special) Sachivalaya, Gandhinagar under Section 3(1) of the Conversation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (for short "the said Act") against the detenu-petitioner and for directing the said detenu-petitioner to be released from the detention forthwith.

2. The facts of the case may briefly be stated as follows :

The Home Department of the Government of Gujarat initiated proceedings against the petitioner and passed order on 17.3.1994 under Section 3 of the said Act. The Authority concerned found that it was necessary to detain the present petitioner in exercise of powers conferred upon him under Sub-Section 1 of Section 3 of the said Act and accordingly, the order was passed for detention of the petitioner under the provisions of the said Act. The order was implemented and petitioner was placed under detention. The petitioner claims that the said order of his detention is illegal on various grounds and, therefore, he has challenged the said order of his detention by filing this petition.

3. On receiving the petition, rule was issued on 26.6.2000 and the same was served upon the respondents and in response to the said service of rule, Mr. Akshay Mehta, learned Senior Standing Counsel for Union of India assisted by Ms. P.J.Dawavala, learned Additional Senior Standing Counsel for Union of India appeared for the first respondent. Mr. S.K.Patel, learned AGP has appeared for respondent nos. 2, 3 and 4. Affidavits have been tendered by them which have been taken on record. I have heard learned advocates for the parties and have perused the papers.

4. It has been mainly contended here that the petitioner has submitted his representation and there was inordinate delay on the part of the respondents in disposing of the said representation submitted by the petitioner. It is therefore argued that the petitioner had a right to submit representation against his detention and it was obligatory on the part of the respondents to dispose of the said representation as early as possible. It has also been contended that the delay caused in disposal of the representation would

disentitle the respondents from keeping the petitioner in detention. That the petitioner had a right to see that the representation is disposed of at the earliest possible and once there is a delay in disposal of the said representation and when there is no explanation for such delay, then further detention of the petitioner should be treated to be illegal.

5. Now, the facts are not very much in dispute. The petitioner had submitted his representation to the Jail Authority on 26.4.2000 and the Jail Authority forwarded the same to the concerned Authorities and, therefore, the concerned Authority at Delhi had received the said representation on 28.4.2000. It appears that the competent authority desired some comments from subordinate office and, therefore, comments were invited from the local office at Rajkot on 1.5.2000. It appears that the office at Rajkot found that the aforesaid matter did not fall within the jurisdiction of Rajkot office but it fall under the jurisdiction of Ahmedabad office and, therefore, office at Rajkot transmitted the papers to the office at Ahmedabad on 16.5.2000. Then comments were received from the said office at Ahmedabad on 23.5.2000. The concerned branch received the papers on 30.5.2000 and matter was placed before the Under Secretary on 5.6.2000 and it was placed before the Joint Secretary on 6.6.2000. In the meantime, the petitioner had submitted second representation on 31.5.2000. That was also processed and ultimately, both the files were tagged together on 20.6.2000 before the concerned Secretary of the Union of India and the combined file was placed before the concerned Secretary on 21.6.2000 and the Under Secretary rejected the said representation of the petitioner on 22.6.2000. These facts are not very much in dispute before me. This can also be gathered from the affidavits filed on record.

6. The learned advocate for the petitioner has argued at length that when the papers were received by the Union of India on 1.5.2000, there was inordinate and unexplained delay in disposal of the said representation which was disposed of ultimately on 22.6.2000. On the other hand, Mr. Akshay Mehta, learned Senior Standing Counsel for the Union of India has also argued at length that this cannot be treated to be inordinate delay on the part of the respondents. It has also been argued by him that the papers were received by the Union of India on 1.5.2000 and Union of India required some comments and further information from the subordinate office and, therefore, comments were called for from the subordinate office at Rajkot. That the present matter related to the

office at Ahmedabad and, therefore, Rajkot office had transmitted the papers to Ahmedabad office and therefore delay caused in disposing the representation of the petitioner cannot be said to be an act of negligence on the part of the respondents. Now, firstly it has to be considered that as the matter did not relate to Rajkot office and the same related to Ahmedabad office, a question does arise as to why the papers sent to Rajkot office by the first respondent. On this point Mr. Mehta, learned Senior Standing Counsel for the first respondent has argued that there are two separate divisions, one for Custom and second for Central Excise. That the jurisdiction is also different in the two matters. That therefore though this matter related to Ahmedabad office, the Union of India wrongly dispatched the same to Rajkot office and, therefore, there was bonafide error on the part of the establishment of the first respondents. It is not possible to accept this defence and to hold that there was bonafide error and, therefore, delay may be condoned. It is very difficult to accept this version advanced on behalf of the respondents. When there is a division of work between Rajkot and Ahmedabad offices, the competent authority must apply its mind to decide as to the place from which the comments could be gathered. As the matter related to Ahmedabad Division, there was no sense in sending the papers to Rajkot office for comments from Rajkot office. Therefore, it cannot be treated to be a mere clerical error in dispatching the papers wrongly to Rajkot office instead of dispatching the same to Ahmedabad office. Therefore, I am of the view that this should be treated to be non-application of mind on the subject matter before the competent authority.

7. Another aspect of the case is that the papers were dispatched on 1.5.2000 or around by Central office at Delhi to Rajkot office and the Rajkot office retained the papers for nearly two weeks and dispatched the same to Ahmedabad office only on 16.5.2000. There is no explanation as to why the papers were retained by Rajkot office for nearly two weeks. Once papers were received by Rajkot office, the concerned Head of the office at Rajkot should have immediately noticed that the matter related to Ahmedabad office and, therefore, the papers ought to have been transmitted to Ahmedabad office very promptly. It is not explained as to why the office at Rajkot retained those papers for nearly two weeks. This is a matter relating to detention and detention is preventive measure and that too without the trial of the person concerned and, therefore, the detenu has valuable right under Article 22(5) of the Constitution of India to

submit effective representation and it is also a right of the petitioner to see that this representation is dealt with and disposed of at the earliest possible moment. At the same time, it cannot be said that once the representation is received by the Authority, the Authority must dispose of the same on the same day. The Authority may require some clarification, request, information, some comments or response from another offices and, therefore, the same may be called for and said process may require some passage of time. If the time reasonable, the same can be explained. If the time is not reasonable or where there is inordinate delay or where delay has not been condoned then in that event, it would not be possible in the eye of law to condone the delay. In the present case, it is absolutely clear that the Rajkot office retained the papers for merely two weeks and it is not explained as to why the papers were retained by the said Rajkot office for the said long period; when the matter did not relate to that office.

8. Mr. Mehta, learned Senior Standing Counsel for the Union of India has tried to explain that the matter was very old and though the order was passed as back as in 1994, the petitioner could not be apprehended and therefore, there was a delay in detaining the petitioner and, therefore, considering the passage of time the Rajkot office could find out the position and, therefore, there was a delay on the part of the Rajkot office. That therefore this delay may be treated to have been explained and, therefore, the delay may not be treated to be a ground for allowing the petition and quashing the detention order. It is not possible to accept the said arguments of Mr. Mehta, learned Senior Standing Counsel for Union of India. Even if the matter is an old one the Rajkot office was not required to go into the merits of the matter. The Rajkot office was not required to offer comments. Therefore, once the Rajkot office found that the matter related to Ahmedabad office then the matter ought to have been transmitted to the Ahmedabad office very promptly. No affidavit has been filed in order to explain as to how the matter was dealt with at Rajkot office and why the Rajkot office retained the papers for nearly two weeks. Nowhere, it has been explained as to why there was a delay for merely two weeks at the Rajkot office. Then it is clear that even thereafter there was further delay after receiving the papers from Ahmedabad office, the matter was ultimately disposed of on 22.6.2000. Some dates have been given for explaining the delay for disposal of the said representation of the petitioner. I think that by and enlarge the delay caused at the office at Rajkot is long lapse of time and that

has not been explained. It may not be necessary for this Court to go into the delay caused elsewhere. Otherwise, it can be said that after receiving the papers from Ahmedabad office the matter was disposed of on 22.6.2000 and, therefore, there was some delay on the part of the respondents in disposing of the representation of the petitioner even after receiving comments from Ahmedabad office. Same way, there was also delay in disposal of the second representation which was submitted on 31.5.2000. Arguments advanced by the learned advocate for the petitioner that the matter did not reach the office of the Secretary of the Union of India and it appears that some intermediate office has called for comments from the Rajkot office. Mr. Mehta, learned Senior Standing Counsel has made a clear statement on behalf of the first respondent at the Bar that comments were called for by the competent authority itself and he was prepared to show the papers showing that the comments were called for by the competent authority and not by intermediate office and, therefore, this argument will not hold the field. An attempt was also made to argue that a representation was also made to the State Government and there also delay was caused. Here, an affidavit has been filed on behalf of the State Government and, there it has been explained as to how the papers have moved from table to table. The representation was filed on 26.4.2000 and it was disposed on 16.5.2000. Mr. S.N.Shelat, learned Addl. Advocate General arguing the matter on behalf of the State Government has submitted that this delay has been explained by respondents nos. 2, 3 and 4 and, therefore, it cannot be said that there was a delay on the part of the respondents in disposing of the said representation. Now, considering the explanation rendered by Mr. S.N.Shelat, learned Addl. Advocate General appearing on behalf of the State Government. I am of the view that there is reasonable and satisfactory explanation rendered by the State Government for the delay caused in disposal of the said representation and, therefore, this argument will not help the petitioner. Anyway, there is a gross delay on the part of the first respondent in disposal of the representation of the petitioner. The main delay has been caused by the Rajkot office which retained the papers for nearly two weeks and there is absolutely no explanation given for retaining the petitioner for nearly two weeks. It was not difficult for the said office to promptly find out that the matter did not relate to it but it related to the office at Ahmedabad.

9. The learned advocate for the petitioner has relied upon a decision of the Hon'ble Supreme Court in

the case of Venmathi Selvam Vs. State of T.N. and Others, reported in (1998) 5 SCC 510. There, it has been observed that, "though delay is not long, it has remained unexplained. Though the delay by itself is not fatal, the delay which remains unexplained becomes unreasonable. In spite of this well-settled legal position the State Government has failed to explain satisfactorily that it had dealt with the representation of the detenu as promptly as possible. It appears that oblivious of the correct legal position and its obligations in matters of preventive detention it has dealt with the representation of the detenu in a routine manner. This indifference of the Government is the cause for rendering the continued detention of the detenu illegal. There it appears to be unexplained delay of about three weeks and it was held that the cause for rendering the continued detention of the detenu illegal."

10. The learned advocate for the petitioner has also relied upon one more decision in the case of Ramjilal Vs. State of Tamil Nadu and Another reported in AIR 1999 SC 684 which goes further to the extent of quashing the detention order when it was a case of unexplained delay of five days in considering and disposing the detenu's representation. Therefore, the minister was out of headquarter. There, the representation could not be disposed of promptly. The Hon'ble Supreme Court observed that merely because of the absence of minister, it did not justify the delay. All most similar facts found in the Special Criminal Application No. 1058 of 1989 in the matter of Premjibhai Tidabhai Parmar Vs. The Secretary to the Government, Ministry of Finance, Department of Revenue, New Delhi and Others rendered by this Court on 23.12.1989. In this case, this Court was required to consider the delay for a period between 25.8.1989 and 8.9.1989 for which the representation remained unattended on the ground that comments were required from the Directorate of Enforcement on the representation made by the petitioner. Ultimately, it was found that there was inordinate delay and the delay was not explained and, therefore, detention order was quashed and set aside. In the present case also, it is a clear case of inordinate and unexplained delay of not less than two weeks at one office then apart from other delay caused elsewhere, the delay at Rajkot office is sufficient to show that there was inordinate and unexplained delay for about two weeks at one office itself. It is therefore clear that the representation has not been promptly dealt with by the first respondent and consequently, further detention of the petitioner has to be treated to be illegal.

11. The reason is that the valuable right of the petitioner of making effective representation is coupled with the right of getting it decided promptly. Here, the matter remained at one office for about two weeks and there was inordinate delay which has not been explained and, therefore, this delay is fatal to the cause and consequently further detention of the petitioner has to be treated to be illegal. Therefore, in my opinion because of the delay caused in disposal of the representation of the petitioner, further detention of the petitioner has become illegal and consequently, the detention order required to be quashed and set aside.

12. In that view of the matter, the present petition is allowed and the order of detention passed by the Government of Gujarat, Home Department (Special) Sachivalaya Gandhinagar on 17.3.1994 placed at Annexure-A to the petition is ordered to be quashed and set aside. The petitioner abovenamed shall be released forthwith, if not required in any other case. Rule made absolute accordingly with no order as to costs.

(D.P.Buch, J)

(vipul)